

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

MARK MILLER

PLAINTIFF

v.

Civil No. 06-5050

SHERIFF KEITH FERGUSON;
and DEPUTY BARRETT

DEFENDANTS

ORDER

Defendants have filed a motion for summary judgment (Doc. 23). To assist plaintiff in responding to the motion, the court is propounding a questionnaire. The court will consider plaintiff's response to the questionnaire in issuing a report and recommendation on the summary judgment motion.

For this reason, Mark Miller is hereby directed to complete, sign, and return the attached response to defendants' summary judgment motions on or before **December 28, 2007**. **Plaintiff's failure to respond within the required period of time may subject this matter to dismissal for failure to comply with a court order.**

IT IS SO ORDERED this 29th day of November 2007.

/s/ J. Marschewski

HON. JAMES R. MARSCHEWSKI
UNITED STATES MAGISTRATE JUDGE

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MARK MILLER

PLAINTIFF

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Civil No. 06-5050

SHERIFF KEITH FERGUSON;
and DEPUTY BARRETT

DEFENDANTS

RESPONSE TO SUMMARY JUDGMENT MOTION

TO: MARK MILLER

These questions and answers will serve as your response to the motion for summary judgment filed by the defendants. You may use additional sheets of paper in responding to these questions. You must file this response by **December 28, 2007**.

1. A warrant for your arrest was issued on February 3, 2006, by Judge Doug Schrantz for failure to appear.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to the Defendants' Exhibit 1 at page 1.

2. On February 2, 2006, you were surrendered off bond for failure to appear.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 1 at page
2.

3. On February 3, 2006, a second warrant for your arrest was issued by Judge Doug Schrantz for failure to appear.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 1 at page
3.

4. On February 8th you were booked into the Benton County Detention Center (BCDC).

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 1 at page
4.

5. At the time of booking, you received and signed, a notification regarding the inmate telephone system. It stated that all calls were collect with the exception of calls to bail bond companies and other approved numbers. It also said that phone calls were allowed as a privilege only.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 1 at page 6.

6. You also completed a medical questionnaire on which you indicated you had no health problems other than an allergy to aspirin.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 1.

7. On February 9th, the Washington County Sheriff's Office sent a message to Benton County requesting that a hold be placed on you for them.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 1 at page 7.

8. On February 17th you requested medical care for your stomach and were to see the nurse.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 2.

9(A). You were seen by the nurse that day and given "MOM" for constipation. You were also told to increase your fluid intake.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at pages

8.

(B). Is "MOM" milk of magnesia?

Answer: Yes _____ No _____.

If you answered no, please explain what it was.

10. On February 22nd you submitted a request asking to be moved to population so you could become a trustee.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 1.

11. In response, you were told you would complete your current disciplinary action and then would be placed in population.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page

1.

12. On February 23rd you came out of your cell for recreation without your striped shirt on. Deputy Free called into the pod numerous times and told you to put your shirt on.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page

1.

13. You refused to put your shirt on and threw it into the air and went back into your cell.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page

1.

14(A). When asked why you would not put it on, you said you could not get it over your head.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 1.

(B). You were told you were being locked down for disobeying the order of a deputy.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 2.

(C). A disciplinary hearing was held that day. In response to the charge you said you just lost your temper.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 2.

(D). You were found guilty and given ten days lock down and loss of privileges.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 2.

(E). You appealed the decision and it was upheld.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 2.

15. On March 1st you submitted a grievance stating you had been on lock down for eight days already and were being told your last day of lock down was March 5th. You stated your original punishment was ten days. You stated you should only have two days left. You also indicated that you did not get along with your cell mate.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 2.

16. In response Captain Petray stated you would be taken off lock down when your time was up.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 2.

17(A). On March 2nd you stated on February 22nd you received a striped shirt that

was so small you could hardly get it over your head. You stated you ask Deputy Dapp if he could exchange it and he said later. You said you got the same response later when you asked again.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 3.

(B). The next morning you indicate you walked down with the shirt in hand to get a replacement. You indicate the deputy on duty came over the speaker and told you to put the shirt on. When you tried to tell her it was too small, you indicate she just repeated over and over again to put it on. Out of frustration, you state you tossed it in the air and walked back to your cell.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to the second page of your March 2nd grievance which is attached to your complaint as an exhibit.

(C). You were given ten days lock down and you state you had been in your cell twenty-four hours a day. You indicate you had been without phone, showers, fresh air, books, visitors, mat, and bedroll (most of the time). You stated you could not even get envelopes until Sunday.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to the second page of your March 2nd grievance which is attached to your complaint as an exhibit.

(D). Captain Petray responded that indigents were passed out at the same time every week. He also indicated you could appeal your lock down.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 3.

18. On March 4th you submitted a grievance stating that you had repeatedly asked to use the phone and been refused. You stated you thought you had the right to call a bondsman

or lawyer. You stated you had missed your opportunity for release.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 4.

19. In response Captain Petray stated he had checked the phone system and you were being allowed to use the phone.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 4.

20. On March 10th you asked for copies of your last two grievances, Deputy Barrett's first name, and for the certificate portion of your court form to be filled out.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 5.

21. Captain Petray responded that just using Deputy Barrett was sufficient and that he had filled out your form.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 5.

22. On March 14th you submitted a medical request stating your stomach had been hurting for weeks and that medication had been finally issued the day before. You stated the medication had now been misplaced.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 3.

23. You were seen by Nurse McDonald on the 16th and prescribed anti-acid tablets with meals for two weeks.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 8.

24. On March 23rd you submitted a medical request because of chapped lips.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 4.

25. You were seen by Nurse McDonald that day and prescribed Carmex for five days.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 8.

26. On March 27th you submitted a grievance complaining Robert Randall was receiving preferential treatment as were the Hispanics. Captain Petray responded he would look into this incident. However, he stated all inmates would be treated equally and were subject to the same rules.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 6.

27. You were at the Washington County Detention Center from April 21st to May 18th.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 1 at page 9.

28. On May 18th you submitted a request stating that you had been returned from Washington County and asked when you would be booked out. You stated Benton County had no more holds on you.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 9.

29. In response, you were told that Rogers still had several failure to appear charges on you.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 9.

30. The call detail report for you from February 8, 2006, to May 19, 2006, shows you

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4A.

[illegible]

32(A). You were able to send and receive mail during the period you were locked down.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain.

(B). You received three meals a day while on lock down.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain.

(C). You were allowed to shower on a regular basis while on lock down.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain.

(D). Between showers you had access to basic hygiene supplies such as soap and water.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain.

(E). You were able to do exercises such as sits ups in your cell.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain.

(F). You were allowed to go to recreation while on lock down.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain.

(G). You were given the opportunity to use the phone to call your bonds man and/or attorney while on lock down.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain.

Answer: Yes _____ No _____.

[illegible]

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34. Please explain in detail how you believe Deputy Barrett violated your federal constitutional rights.

Answer:

35. Please state when you were released from the BCDC.

Answer:

36. Under section 1983, an individual may be sued in his official capacity, in his individual capacity, or in both capacities. An official capacity claim is the same as a claim against the entity for whom the individual works and requires a showing of a custom or policy. Ordinarily, if you fail to state what capacity you are suing an individual in, the law presumes you are bringing only an official capacity claim. An individual capacity claim seeks to hold the individual personally liable. Did you intend to bring an official capacity claim, an individual capacity claim, or both types of claims against the defendants?

Answer:

[illegible]

EXECUTED ON THIS _____ DAY OF _____ 2007.

MARK MILLER